

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN**

**PATRICIA A. WESTMORE, and
DWIGHT R. WESTMORE,**

Plaintiffs,

v.

Case No. 14-cv-861-wmc

**DAVID HYDE,
CALLAE K. HYDE,
SHERIFF MICHAEL W. BRENNAN,
DEPUTY TERRI L. PROVOST, and
ASHLAND COUNTY, WISCONSIN,**

Defendants.

PLAINTIFFS' MOTIONS IN LIMINE

Plaintiffs Patricia A. Westmore and Dwight R. Westmore ("plaintiffs") hereby move the Court pursuant to Fed. R. Evid. 103(d), for an Order *in limine* to exclude the following evidence from being presented by defendants at trial:

1. DEFENDANTS' PURPORTED EXPERT EVIDENCE. Plaintiffs hereby move to exclude defendants' purported expert affidavits, supplemental expert affidavits and exhibits, and all related expert opinion testimony by defendants' named experts, from presentation at trial in this case, pursuant to Fed. R. Evid. 602, 701 & 702, the Court's *Preliminary Pretrial Conference Order*, Fed. R. Civ. P. 26(a)(2), and Fed R. Civ. P. 37.

The purported expert affidavits, supplemental expert affidavits and exhibits are as follows: Affidavit of Lesley Szenay (dkt. #s 19, 19-1, 19-2 & 19-3, dated November 19, 2015); Affidavit of Heidi Jahnke (dkt. #s 20, 20-1, 20-2 & 20-3, dated November 16, 2015); Affidavit

of Callae Hyde (dkt. #s 21, 21-1, 21-2 & 21-3, dated November 16, 2015); Affidavit of David Hyde (dkt. #s 22, 22-1, 22-2 & 22-3, dated November 16, 2015); Supplemental Affidavit of Lesley Szenay (dkt. # 46, dated December 30, 2015); Supplemental Affidavit of Heidi Jahnke (dkt. #s 47, 47-1 & 47-2, dated December 30, 2015), and Supplemental Affidavit of David Hyde (dkt. #s 48, 48-1 & 48-2, dated January 4, 2016).

The related expert opinion testimony is any and all expert opinion testimony that defendants may propose to offer at trial from Lesley Szenay, Heidi Jahnke, Callae Hyde, and David Hyde.

The grounds for this motion are that the above documents and all related expert opinion testimony by the four individuals named above is inadmissible at trial under the Fed. R. Evid. 602, 701 & 702, because it is not based on personal knowledge, does not qualify as lay opinion, and is not qualified by knowledge, skill, experience, training or education. Furthermore, defendants' expert evidence was not properly disclosed by defendants to plaintiffs pursuant to the Court's *Preliminary Pretrial Conference Order*, Fed. R. Civ. P. 26(a)(2), and Fed R. Civ. P. 37. These grounds are more fully set forth, and are restated herein by reference, in "Plaintiffs' Brief in Support of Motion to Strike or Exclude Defendants' Expert Affidavits, Supplemental Expert Affidavits, and Exhibits," the "Declaration of Glenn M. Stoddard in Support of Motion to Strike," dated January 19, 2016 (dkt. #s 53, 54 & 55), and the documents previously filed and cited by the parties relative to defendants' motion for summary judgment.

2. DEFENDANTS' PREVIOUSLY UNDISCLOSED WITNESSES AND ANY EVIDENCE WHICH MAY BE DISCOVERED AT DEPOSITIONS TAKEN BY DEFENDANTS AFTER APRIL 15, 2016. Plaintiffs further move to exclude defendants'

previously undisclosed witnesses and any evidence which may be discovered at depositions noticed to be taken by defendants after April 15, 2016.

On April 18, 2016, plaintiffs' counsel received via regular mail from defendants' attorney, Charles B. Harris, two cover letters, dated May 15, 2016, and seven (7) new deposition notices, for depositions Attorney Harris unilaterally scheduled for May 3, 4 & 5, without any prior consultation or agreement with plaintiffs' counsel. The seven (7) new deposition notices include proposed depositions of five (5) potential new witnesses that defendants never previously disclosed to plaintiffs pursuant to Rule 26(a)(1) or in any other manner.

These witnesses are: Bruce Jonas; Lance Goetlich; James Mineau, Gretchen Wilson; and John Pillath. Additionally, defendants have noticed a deposition of Heidi Jahnke for May 3, 2016, and of Melinda Grahek for May 4, 2016, without any prior consultation or written agreement by the parties to extend discovery beyond the discovery deadline of April 15, 2015, as set forth in the Court's *Preliminary Pretrial Conference Order*, p. 3, § 5 (dkt. # 9).

On April 18, 2016, plaintiffs requested by email letter that Attorney Harris contact plaintiffs' lead counsel, Attorney Glenn M. Stoddard, by phone to try to reach a reasonable resolution of this discovery dispute. A copy of this letter is attached hereto and marked as Exhibit A. The April 15, 2016 cover letters and deposition notices from Attorney Harris are attached hereto as Exhibit B. Unfortunately, Attorney Harris did not respond to Attorney Stoddard's April 18, 2016, letter as requested.

Plaintiffs, therefore, move the Court to exclude defendants' previously undisclosed witnesses and any evidence which may be discovered at depositions noticed to be taken by defendants after April 15, 2016. Specifically, plaintiffs move the Court to prohibit any and all testimony and other evidence that may be offered at trial by defendants from or through the

following witnesses: Bruce Jonas; Lance Goetlich; James Mineau, Gretchen Wilson; and John Pillath.

In addition, plaintiffs hereby move the Court prohibit defendants from presenting any and all testimony and evidence discovered through depositions of Melinda Grahek and Heidi Jahnke, which have been noticed by defendants unilaterally and without agreement by the parties for times after the close of discovery on April 15, 2016, as set forth in the Court's *Preliminary Pretrial Conference Order*, p. 3, § 5 (dkt. # 9). Furthermore, these two witnesses, and any purported expert evidence they may offer, was not properly disclosed by defendants pursuant to the Court's *Preliminary Pretrial Conference Order*, Fed. R. Civ. P. 26(a)(2), and Fed R. Civ. P. 37, and must be prohibited on that basis.

Dated this 20th day of April, 2016.

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